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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,814	12/01/2003	Shotaro Takemoto	16224Z	5568

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GARDEN CITY, NY 11530

EXAMINER

SEVERSON, RYAN J

ART UNIT PAPER NUMBER

3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/724,814

Applicant(s)

TAKEMOTO ET AL

Examiner

Ryan Severson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 January 2007.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-25 is/are pending in the application.  
4a) Of the above claim(s) 18-21 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 17 and 22-25 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 10 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. This office action is in response to the amendments filed 10 January 2007.

### *Drawings*

2. The drawings were received on 10 January 2007. These drawings are accepted and the drawing objection of the previous office action is withdrawn.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 17, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitfield et al. (5,470,338).**
5. Regarding claims 17 and 24, the rejection stands for the same reasons as described in the previous office action (paper number 20060927) mailed 06 October 2006 in paragraph 5.
6. Furthermore, it is noted the treatment device is interpreted to be the distal end of the device of Whitfield and the endoscope is interpreted to be the elongate tubular housing (as shown in figure 1) that is inserted into the body.

7. Regarding the amendments in claim 17, the groove as described in the previous office action as an "X" shape in figure 18 also includes an annular form (the ring-like shape at the center of the X). It is engageable at a plurality of points on the arm in the sense that each portion (273) has a tip that engages the arm when inserted therein. As shown, there would be 4 distinct contact points between the groove of the recovery member and the arm.

8. Further regarding the amendments to claim 17, when the arm of Whitfield is inserted into the guide, the recovery member and the elongated circular member keep an engagement. The engagement is interpreted to be when the elongated circular member is moved distally, the arms are pivoted and move into the guide (as in figure 10). The recovery member is held in place in the slots in the housing (16b, see figure 3) and the housing also holds the elongated circular member in place, and therefore the recovery member and the elongated circular member are interpreted as interlocked or engaged.

9. The rejection of claim 24 stands as described in the previous office action.

10. Regarding claim 25, the expansion proof member is interpreted to be the housing (16) that completely surrounds the elongate circular member. A wire is defined as "a slender, string-like elongate filament made in a variety of diameters." Therefore, the housing, as it is shown to be elongate and slender, can be interpreted to be string-like or a wire.

***Claim Rejections - 35 USC § 103***

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. **Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitfield et al. (5,470,338) as applied to claim 17 above, and further in view of Shimomura et al. (3,839,772)** for the same reasons set forth in the previous office action in paragraph 6. With regard to applicant's argument that the use of the invention of Shimomura et al. is different from that of Whitfield, the Shimomura reference solves the same problem applicant has claimed, and that is to have an arm that is elastic. The use of elastic materials in the medical arts is well known to provide flexibility and durability to specific parts where desired. Further, applicant has admitted that the

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Shimomura reference does disclose an elastic member. Proper motivation to combine the references has been shown in the previous office action.

14. **Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whitfield et al. (5,470,338) in view of Shimomura et al. (3,839,772) as applied to claim 22 above, and further in view of Ouchi (6,013,095) for the same reasons set forth in the previous office action in paragraph 7.**

#### ***Double Patenting***

15. The double patenting rejection of the previous office action, as described in paragraph 8, is withdrawn because applicant has cancelled claim 17 in the copending application (10/958,801).

#### ***Response to Arguments***

16. Applicant's arguments filed 10 January 2007 have been fully considered but they are not persuasive. See paragraphs 6-9 and 13 above.

#### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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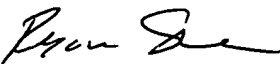
18. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 9:00 - 5:30.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Ryan Severson  
March 22, 2007

  
ANH TUAN T. NGUYEN  
SUPERVISORY PATENT EXAMINER  
